

FILED IN CLERK'S OFFICE
U.S.D.C.-Atlanta

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MAY 11 2006

LUTHER D. THOMAS, Clerk
By: *[Signature]*
Deputy Clerk

**TONY L. WARE, CEO and
T. L. WARE BOTTLING CO., INC.,**

Plaintiffs,**vs.**

**FLEETBOSTON FINANCIAL CORP.
F/K/A BANKBOSTON CORP.**

Defendant.

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) **CIVIL ACTION FILE NUMBER:**
) **1 : 0 5 - C V - 0 4 2 6 - M H S**

) **MICHAEL R. JOHNSON, SR, DECLARATION**
)
) **FILED IN SUPPORT OF MOTION**

**DECLARATION OF MICHAEL R. JOHNSON, SR. ATTORNEY
FOR PLAINTIFF T.L. WARE BOTTLING CO., INC.**

I MICHAEL R. JOHNSON, Sr., Attorney for the Plaintiff **T.L. WARE BOTTLING COMPANY, INC.,** in the above-styled action in deposes, states and make the declarations pursuant to **28 U.S.C. § 1746** as follows:

1. That my name is **MICHAEL R. JOHNSON, SR.,** and that I am over the age of the legal majority and is competent to make these declarations. I further state that all statements made in this declaration are made on my personal knowledge, information and belief. I am qualified as an attorney at law to give legal advice to the Plaintiff in this civil action.

2. On February 7th, 2005 I instructed Plaintiff Tony L. Ware who is also my law clerk to present our proposed Order and Motion to Set Aside the order of February 2nd, 2005 before Presiding Judge Jerry W. Baxter. We prepared a consent order for the Plaintiffs in this action only. Nor I or my law clerk who is also the Plaintiff Tony L. Ware did personally talk with Judge Baxter or personally told him that our consent order was signed by or consented to by the Defendant FleetBoston Financial Corporation f/k/a BankBoston a Rhode Island corporation.

1 4. I have been a Federal and State prosecutor and I have never presented any
 2 improper orders to a Judge for their signature. In fact our law firm always sends a
 3 cover letter attached to our motion and proposed order. See, **Exhibit "A"** attached
 4 hereto. The Affidavit of Judge Baxter is the product of an illegal Ex parte
 5 communication by FleetBoston of Delaware's attorneys while this case was pending
 removal to this Court a clear violation of **Uniform Superior Court Rules, Rule 4.1**

6 5. At the time Judge Baxter gave his affidavit, the Plaintiff and I were unaware
 7 of any communications by FleetBoston's Attorneys and their acts of improperly
 8 drafting an affidavit for Judge Baxter to sign. Thus such affidavit must be stricken as
 9 improper evidence and cannot be considered as a matter of law pursuant to the
Uniform Superior Court Rules, Rule 4.1. Rule 4.1 reads as follows:

10 **"Except as authorized by law or by rule, judges**
 11 **shall neither initiate nor consider ex parte**
 12 **communications by interested parties or their attorneys**
 concerning a pending or impending proceeding."

13 6. In all my years as an attorney I have never heard of a Judge claiming that he or
 14 she did not know what they were signing or did not read an order submitted to them
 15 for signing. Clearly Judge Baxter did understand and read the order he signed.
 16 Because of Judge Baxter prohibited ex parte communications with the Attorneys of
 17 FleetBoston, this Court must not consider his affidavit as a matter of Federal Law.
 18 FleetBoston Financial of Delaware lacks standing in this case and has no right to ask
 this Court to set aside a perfectly legal and binding order of the Superior Court of
 Fulton County. See, **Hunter v. Gerooge**, 265 Ga. 573, 458 SE2d 830 (1995).

19 7. The February 7th, 2005 Order clearly shows only the Plaintiffs consented.
 20 There are no errors in this order. However, even if it were true that the Plaintiffs and I
 21 made a representation to the Court that all parties had consented to the February 7th,
 22 2005 Order, such representation would still be true and correct because Defendant's
 23 implied consent was given due to its default in this action. See, **O.C.G.A. § 9-11-5(a)**
 24 (a Defendant waives all notices of the issuing of any orders in the action while being
 25 in default). Furthermore, if any error was made by Judge Baxter in signing the Order
 of February 7th, 2005 such error would be deemed a "Harmless Error."

1 See, O.C.G.A. § 9-11-61 which reads as follows:

2 "No error in either the admission or the exclusion of evidence and no
3 error or defect in any ruling or order or in anything done or omitted by the court
4 or by any of the parties is ground for granting a new trial or for the setting aside
5 a verdict or for vacating, modifying, or otherwise disturbing a judgment or
6 order, unless refusal to take such action appears to the court inconsistent with
7 substantial justice. The court at every stage of the proceeding must disregard
8 any error or defect in the proceeding which does not affect the substantial
9 rights of the parties."

7 8. It is clear from the record that the Plaintiffs brought their action against
8 Defendant FleetBoston Financial Corporation f/k/a/ BankBoston Corporation a Rhode
9 Island corporation and did not name FleetBoston Financial Corporation of Delaware a
10 dissolved corporation which has improperly removed this action.

10 9. The unlawful use of the same corporate name "**FLEEBOSTON FINANCIAL**
11 **CORPORATION**" in the State of Georgia, mislead me, the Plaintiffs, public and the
12 trial Court in an attempt to defeat Plaintiffs claims and to evade Service of Process.

12 10. It was both Defendant FleetBoston of Rhode Island and FleetBoston of
13 Delaware own fault by committing fraud in the use of this corporate name.

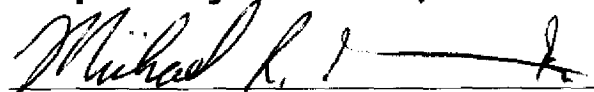
14 11. These corporations were both grossly negligent in causing Defendant
15 FleetBoston Financial Corporation f/k/a/ BankBoston Corporation of Rhode Island to
16 received a Default judgment against it. FleetBoston of Delaware cannot now come
17 into a court of equity with unclean hands and seek the protection of this Court. See,
18 O.C.G.A. § 23-2-56 which reads as follows:

18 "*Fraud may be consummated by signs or tricks, or through agents*
19 *employed to deceive, or by any other unfair way used to cheat another.*

20 12. I MICHAEL R. JOHNSON, ATTORNEY for the Plaintiff T.L. Ware Bottling
21 Company, Inc., declare under penalty of perjury that the foregoing is true and correct.

21 This 11th day of MAY, 2005.

22 Respectfully Submitted,

23 

24 MICHAEL R. JOHNSON, SR., Affiant
25

ATTORNEY Michael R. Johnson, SR.,'s

EXHIBIT

“A”

Johnson & Associates, P.C.

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MICHAEL R. JOHNSON, SR.

OF COUNSEL: GARY G. MIMS

VIA-HAND DELIVERY

February 7th, 2005

Honorable Jerry W. Baxter
Presiding Judge
Superior Court of Fulton County
185 Central Avenue, S.W.
Atlanta, Georgia 30303

**Reference: Tony L. Ware, CEO and T.L. Ware Bottling Company,
Inc. v. FleetBoston Financial Corporation f/k/a
BankBoston Corp., Civil Action File No. 2004CV94553**

Dear Judge Baxter:

The parties Plaintiffs in the above-entitled civil action has consented to the entry of the consent order attached to this letter in this uncontested matter by submitting their joint Motion to Set Aside the Court Order.

Pursuant to the Local Procedures of the Atlanta Judicial Circuit (AJC) Rule 110(a)(h) the Presiding Judge can enter any consent order in any uncontested matter pending in this Court. Our request to enter a consent order should be submitted to the Presiding Judge of the week pursuant to the Local Rules.

Please sign and enter our consent order so that we can file it with the Court or else you can file the same and send the parties a copy of the order at their address of record on the enclosed final judgment attached to this letter. Thank you for your time concerning this matter.

Respectfully Submitted,



Michael R. Johnson, Sr.
Attorney for the Plaintiff
Georgia Bar No. 395056

MJ/tw

cc: Tony L. Ware, PhD, JD

Enclosure: Order

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FOR THE NORTHERN DISTRICT OF GEORGIA
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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

COMES NOW, MICHAEL R. JOHNSON, SR., Attorney for the Plaintiff
T.L. Ware Bottling Company, Inc., with the consent of Plaintiff Tony L. Ware and
certify that I have served FleetBoston Financial Corporation of Delaware with a
copies of Plaintiffs' REVISED MOTION TO DISMISS AND REMAND,
MEMORANDUM OF LAW and other documents filed by the Plaintiffs in this action on
the following person:

Mr. William J. Holley, Esq.
285 Peachtree Center Ave, N.E., 1500 Marquis Tower
ATLANTA, GEORGIA 30303

This 11th, day of MAY, 2005.

Respectfully Submitted,

[Signature]

**Michael R. Johnson, Sr.
Attorneys for the Plaintiff
Georgia Bar No. 395056**